

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

BED BATH AND BEYOND, INC.,)	
)	Civil Action No. 08 - 1182
v.)	
)	Magistrate Judge Lisa Pupo Lenihan
THE FOUNDRY AT SOUTH)	
STRABANE, LLC,)	

**REPORT AND RECOMMENDATION RE: DEFAULT JUDGMENT AGAINST DEFENDANT
THE FOUNDRY AT SOUTH STRABANE, LLC**

I. RECOMMENDATION

It is respectfully recommended that the order set forth below regarding damages be entered against Defendant in this matter.

II. REPORT

The complaint in this matter was filed on August 25, 2008. Plaintiff made various attempts to effect service on the Defendant, as set forth in its Motion for Default Judgment at docket number 7. Default judgment was entered by the Clerk as to the Defendant The Foundry at South Strabane, LLC ("Defendant"), for failure to plead or otherwise defend as provided by the Federal Rules of Civil Procedure. Pursuant to request of counsel, the Court conducted a damages hearing on March 9, 2009 at 2:00 p.m., at which Plaintiff Bed Bath & Beyond Inc. ("Plaintiff") presented testimony and evidence in support of its claim for damages. Based upon the testimony presented at the hearing, it is recommended that the following order be entered:

1. Plaintiff has proven by a preponderance of the evidence that Defendant's material breaches of the lease agreement entered into by the parties on July 11, 2006 (the "Lease") caused Plaintiff damages in the amount of \$3,923,084. This amount is calculated by taking into account all items of damage

presented by the Defendant at the hearing, less the amount alleged for business interruption as the Court believes that this item is covered by the liquidated reimbursement credit set forth in the lease agreement.

2. As a result of Defendant's material breaches of the Lease and failure to meet the Delivery Date, Plaintiff has no obligation to pay any rent, taxes, or common areas charges as set forth and defined in the Lease until Defendant or its successor meets the terms of the Delivery Date in the Lease.

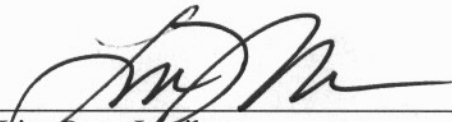
3. Defendant or any party who assumes the Lease is obligated under the terms of the Lease to repair all defects at the property that is the subject of the Lease such that Plaintiff may lawfully resume normal business operations. Plaintiff may exercise all rights under the Lease to enforce this obligation.

4. The Clerk shall hereby enter judgment on behalf of the Plaintiff in the amount of \$3,923,084 with costs to be taxed to the Defendant.

III. CONCLUSION

In accordance with the Magistrate Judges Act, 28 U.S.C. § 636(b)(1)(B) and (C), and Rule 72.1.4(B) of the Local Rules for Magistrate Judges, the parties are allowed ten (10) days from the date of service of a copy of this Order to file objections to this Order. Any party opposing the objections shall have ten (10) days from the date of service of objections to respond thereto. Failure to file timely objections may constitute a waiver of any appellate rights.

March 12, 2009



Lisa Pupo Lenihan
United States Magistrate Judge